



[Billing Code: 6750 - 01S]

## **FEDERAL TRADE COMMISSION**

### **Information Collection Activities; Proposed Collection; Comment Request**

**AGENCY:** Federal Trade Commission (“Commission” or “FTC”).

**ACTION:** Notice.

**SUMMARY:** The FTC plans to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in the Telemarketing Sales Rule (“TSR”). That clearance expires on August 31, 2019.

**DATES:** Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write “TSR PRA Comment, FTC File No. P094400” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hsue, Staff Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Room CC-

8528, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, or by telephone to (202) 326-3132.

#### **SUPPLEMENTARY INFORMATION:**

The TSR, 16 CFR 310, TSR, (OMB Control Number 3084-0097) implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108 (“Telemarketing Act”), as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (“USA PATRIOT Act”), Pub. L. 107056 (Oct. 25, 2001). As required by the Telemarketing Act, the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

In 2003, the Commission amended the TSR to include certain new disclosure requirements and to expand the Rule in other ways. *See* 68 FR 4580 (Jan. 29, 2003). The Rule was amended to cover upsells<sup>1</sup> (not only outbound calls, but also inbound calls) and additional transactions such as solicitation by telephone of charitable donations by third-party

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<sup>1</sup> An “upsell” is the solicitation in a single telephone call of the purchase of goods or services after an initial transaction occurs. The solicitation may be made by or on behalf of a seller different from the seller in the initial transaction, regardless of whether the initial transaction and the subsequent solicitation are made by the same telemarketer (“external upsell”). Or, it may be made by or on behalf of the same seller as in the initial transaction, regardless of whether the initial transaction and subsequent solicitation are made by the same telemarketer (“internal upsell”).

telemarketers. The amendments established the National Do Not Call Registry (“Registry”), permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive certain telemarketing calls.<sup>2</sup> Accordingly, under the TSR, most sellers and telemarketers are required to refrain from calling consumers who have placed their numbers on the Registry.<sup>3</sup> Moreover, sellers and telemarketers must periodically access the Registry to remove from their telemarketing lists the telephone numbers of those consumers who have registered.<sup>4</sup>

In 2008, the Commission amended the TSR regarding prerecorded calls, 16 CFR 310.4(b)(1)(v), and call abandonment rate calculations, 16 CFR 310.4(b)(4)(i).<sup>5</sup> The amendment regarding prerecorded calls added additional information collection requirements.<sup>6</sup> Specifically, the amendment authorized sellers and telemarketers to place outbound prerecorded calls to consumers only if: (1) the seller has obtained written agreements from those consumers to

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<sup>2</sup> 68 FR 4580 (Jan. 29, 2003). The Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third-party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It does not limit calls by political organizations, charities, or telephone survey companies.

<sup>3</sup> 16 CFR 310.4(b)(1)(iii)(B).

<sup>4</sup> 16 CFR 310.4(b)(3)(iv). Effective January 1, 2005, the Commission amended the TSR to require telemarketers to access the Registry at least once every 31 days. *See* 69 FR 16368 (Mar. 29, 2004).

<sup>5</sup> *See* 73 FR 51164 (Aug. 29, 2008).

<sup>6</sup> By contrast, the revised standard for measuring the call abandonment rate did not impose any new or affect any existing reporting, recordkeeping or third-party disclosure requirements within the meaning of the PRA. That amendment relaxed the prior requirement that the abandonment rate be calculated on a “per day per campaign” basis by permitting, but not requiring, its calculation over a 30-day period, as industry requested.

receive prerecorded telemarketing calls after a clear and conspicuous disclosure of the purpose of the agreement; and (2) the call discloses and provides an automated telephone keypress or voice-activated opt-out mechanism at the outset of the call.

In 2010, the Commission published additional amendments taking effect that year to require specific new disclosures in the sale of a “debt relief service,” as that term is defined in Section 310.2(m) to include for-profit credit counseling services, debt settlement, and debt negotiation services. The amendments result in PRA burden for all covered entities – both new and existing respondents – that engage in telemarketing of these services.

**Burden Statement:**

**Estimated Annual Hours Burden: 1,233,817 hours**

The estimated burden for recordkeeping compliance is 14,061 hours for all industry members affected by the Rule. The estimated burden for the requisite disclosures for both live telemarketing calls and prerecorded calls is 1,219,428 hours for all affected industry members. Estimated burden for reporting requirements is 328 hours. Thus, the total PRA burden is 1,233,817 hours. These estimates are explained below.

**Number of Respondents:**

In calendar year 2018, 18,714 telemarketing entities accessed the Do Not Call Registry; however, 561 were “exempt” entities obtaining access to data.<sup>7</sup> Of the 18,153 non-exempt entities, 13,131 sellers and 5,022 telemarketers accessed the Registry. Of those, however, 8,447

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<sup>7</sup> An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

sellers and 3,145 telemarketers obtained data for just one state. Staff assumes that these 11,592 entities are operating solely intrastate, and thus would not be subject to the TSR.<sup>8</sup> Therefore, Staff estimates that 6,561 telemarketing entities are currently subject to the TSR, of which 4,684 (13,131 – 8,447) are sellers and 1,877 (5,022 – 3,145) are telemarketers.<sup>9</sup>

(a) Recordkeeping Hours

Staff estimates that the 6,561 telemarketing entities subject to the Rule each require approximately one hour per year to file and store records required by the TSR for an annual total of 6,561 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities<sup>10</sup> is 14,061 hours.

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<sup>8</sup> These entities would nonetheless likely be subject to the Federal Communications Commission's ("FCC") Telephone Consumer Protection Act regulations, including the requirement that entities engaged in intrastate telephone solicitations access the Registry.

<sup>9</sup> For purposes of these calculations, staff assumes that telemarketers making prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, because the latter may consume much more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

<sup>10</sup> The recordkeeping requirements for prerecorded calls are de minimis, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates, staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records of written agreements by new customers to receive prerecorded calls should not be material since the agreements may be obtained and recorded electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, "E-SIGN"). Although telemarketers (and telefundors) that place prerecorded calls on behalf of sellers or charities must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this obligation

(b) Disclosure Hours

Staff believes that in the ordinary course of business, a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute “burden.” 5 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought OMB clearance, staff estimates that most of the Rule disclosures would be made in at least 75 percent of telemarketing calls even absent the Rule.<sup>11</sup> Accordingly, staff has continued to estimate that the hours burden for most of the Rule’s disclosure requirements is 25 percent of the total hours.

*Pre-sale Disclosures*

Consistent with its past practice, staff necessarily has made additional assumptions in estimating burden. Based on industry data and further FTC extrapolations,<sup>12</sup> staff estimates that 2.3 billion outbound telemarketing calls are subject to FTC jurisdiction and attributable to direct

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extends both to live and prerecorded telemarketing calls, and is also subsumed within the PRA estimates above.

<sup>11</sup> 78 FR at 19,485.

<sup>12</sup> Staff employs the methodology, assumptions, and studies it has consistently used since their development for the 2003 TSR amendments to determine, indirectly from external sales data and the relative percentages of inbound and outbound calls, the number of telemarketing calls and resulting number of sales because no call or sales number totals are otherwise available. Staff relies on its own prior estimates that of the \$134.7 billion of sales from outbound calls to consumers in 2012 (DMA 2013 Statistical Fact Book, at 5), 92.8% of those sales, or \$125 billion, are subject to FTC jurisdiction, with the average value of a sale being \$85 and 20% of

orders, that 450 million of these calls result in direct sales,<sup>13</sup> and that there are 1.8 billion inbound calls that result in direct sales. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds<sup>14</sup> for telemarketers to recite the required pre-sale disclosures plus 3 additional seconds<sup>15</sup> to disclose the information required in the case of an upsell. Staff also retains its longstanding estimates that at least 60 percent of sales calls result in “hang-ups” before the telemarketer can make all the required disclosures and that “hang-up” calls allow for only 2 seconds of disclosures.<sup>16</sup>

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.<sup>17</sup> Moreover, staff assumes that consumers who agree to an upsell will not

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outbound calls resulting in a sale.

<sup>13</sup> For staff’s PRA burden calculations, only direct sales orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR’s recordkeeping and disclosure provisions. The direct sales transactions total of 450 million is based on an estimated 1.5 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is derived from the only known available outside direct sales data for telephone marketing to consumers. *See* DMA Statistical Fact Book (2001), p. 301.

<sup>14</sup> *See, e.g.*, 60 FR 32,682, 32,683 (June 23, 1995); 63 FR 40,713, 40,714 (July 30, 1998); 66 FR 33,701, 33,702 (June 25, 2001); 71 FR 28,698, 28,700 (May 17, 2006); 74 FR 11,952, 11,955 (Mar. 20, 2009); 78 FR at 19,485.

<sup>15</sup> 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR at 28,700; 78 FR at 19,485.

<sup>16</sup> *See, e.g.*, 60 FR at 32,683; 78 FR at 19,485.

<sup>17</sup> This assumption originated with industry response to the Commission’s 2003 Final Amended

terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above, staff estimates that the total time associated with these pre-sale disclosure requirements is 826,389 hours per year: [(2.3 billion outbound calls x 40% lasting the duration x 7 seconds of full pre-sale disclosures ÷ 3,600 (conversion of minutes to hours) x 25% burden = 447,222 hours) + (2.3 billion outbound calls x 60% terminated prematurely x 2 seconds of disclosures ÷ 3,600 x 25% burden = 191,667 hours) + (450 million outbound calls resulting in direct sales x 40% upsell conversions x 3 seconds of related disclosures ÷ 3,600 x 25% burden = 37,500 hours) + (1.8 billion inbound calls x 40% upsell conversions x 3 seconds ÷ 3,600 x 25% burden = 150,000 hours)] = 826,389 hours).

#### *General Sales Disclosures*

The TSR also requires several general sales disclosures in telemarketing calls before the customer pays for goods or services.<sup>18</sup> These disclosures include the total costs of the offered goods or services, all material restrictions, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer).

Staff estimates that the general sales disclosures for telemarketing calls require 352,513 hours annually. This figure includes the burden for written disclosures (1,005 inbound

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TSR. See 68 FR 4580, 4597 n.183 (Jan. 29, 2003). Although the comment provided an estimate specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, absent the receipt of any information to the contrary.

<sup>18</sup> 16 CFR 310.3(a)(1)(i)-(iii).



telemarketing entities estimated to use direct mail<sup>19</sup> x 10 hours<sup>20</sup> per year x 25% burden = 2,513 hours), as well as oral disclosures [(450 million outbound calls x 8 seconds ÷ 3,600 x 25% burden = 250,000 hours) + (450 million outbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden = 20,000 hours) + (1.8 billion inbound calls x 40% upsell attempts x 20% sales conversion x 8 seconds ÷ 3,600 x 25% burden = 80,000 hours)] = 352,513 hours.<sup>21</sup>

### *Disclosures for Debt Relief Services*

To estimate the time required to provide the general sales disclosures for calls offering debt relief services, staff employs different assumptions and calculations.<sup>22</sup> Employing that analysis, as modified in response to a public comment to account for inbound debt relief sales,<sup>23</sup> staff continues to assume that outbound calls to sell and inbound calls to buy debt relief services

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<sup>19</sup> Based on previous assumptions, staff estimates that of the 6,561 telemarketing entities, 3,015 conduct inbound telemarketing. Consistent with its previous analyses, staff estimates that, of the 3,015 entities that conduct inbound telemarketing, approximately one-third (1,005) will choose to incorporate written disclosures in their direct mail solicitations. Because it is likely that industry members make the requisite disclosures in direct mail solicitation in an effort to qualify for a Rule exemption, Commission staff believes it is appropriate to include those written disclosures in the burden hour calculation.

<sup>20</sup> FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff believes this estimate remains reasonable.

<sup>21</sup> The percentage and unit of time measurements are FTC staff estimates. (For more information regarding the 25% apportionment appearing above *see supra* note 17 and surrounding text.)

<sup>22</sup> 75 FR at 48,504-05.

<sup>23</sup> Debt relief sales in outbound calls have always been subject to the general sales disclosure requirements, and are subsumed in the outbound general sales disclosure totals.

are made only to consumers who are delinquent on one or more credit cards.<sup>24</sup> Staff further assumes that each such consumer will receive one outbound call and place one inbound call for these services.

To estimate the number of consumers who are delinquent on one or more credit cards, staff assumes that couples constitute a single decision-making unit, as do single adults (widowed, divorced, separated, never married) within each household. According to the most current U.S. Census Bureau data available, there are 165,015,000 decision-making units.<sup>25</sup> Of these, 119,140,830 have one or more credit cards,<sup>26</sup> and there are 2,942,779 decision-making units with at least one delinquent credit card account.<sup>27</sup>

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<sup>24</sup> By extension, upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

<sup>25</sup> U.S. Census Bureau, *Income and Poverty in the United States: 2017* (September 2018), Table 1, available at <https://www.census.gov/content/census/en/library/publications/2018/demo/p60-263.html> reflecting 127,586,000 households in 2017); U.S. Census Bureau, *Sharing a Household: Household Composition and Economic Well Being: 2007-2010* (June 2012), Table 2, p. 4, available at <https://www.census.gov/prod/2012pubs/p60-242.pdf> (reflecting 37,429,000 adults living with a householder who is neither a spouse nor cohabiting partner in 2010 and includes adults enrolled in school). Commission staff was unable to locate more current data for the latter source.

<sup>26</sup> The estimated number of consumers with one or more credit cards is derived by multiplying the estimated decision making units (165,015,000) by the percentage of consumers with one or more credit cards: 72.2%. The percentage of consumers with one or more credit card is based on a study conducted by the Federal Reserve Bank of Boston. See Federal Reserve Bank of Boston, Consumer Payments Research Center, *The 2009 Survey of Consumer Payment Choice* (April 2011), screen pp. 8, 48 available at [www.bostonfed.org/economic/ppdp/2011/ppdp1101.pdf](http://www.bostonfed.org/economic/ppdp/2011/ppdp1101.pdf). Commission staff have not found percentage updates of comparable nature. Later versions of such data differ in how they present consumer adoption of payment instruments, e.g., combining, rather than presenting as separate percentages, consumer purchases through credit and charge card use.

<sup>27</sup> The estimated number of consumers with a delinquent account is derived by multiplying the estimate of consumers with one or more credit cards (119,140,830) by the delinquency rate for

Accordingly, allowing for the above-stated FTC staff estimate of eight seconds per general sales disclosures, staff estimates further that the general sales disclosure burden for inbound debt relief calls is 1,635 hours (2,942,779 inbound debt relief calls to decision-making units with at least one delinquent credit card account x 8 seconds ÷ 3,600 x 25% burden).

*Disclosures for non-exempt inbound calls*

The TSR general sales disclosures must also be made by sellers and telemarketers for inbound calls in response to ads for investment opportunities, certain business opportunities, credit card loss protection (“CCLP”),<sup>28</sup> credit repair,<sup>29</sup> loss recovery services,<sup>30</sup> and advance fee loans.<sup>31</sup>

Staff’s estimate for each of these types of non-exempt inbound calls is determined by comparing the number of complaints reported to the FTC’s Consumer Sentinel system in the most recent complete year to the total number of reported fraud complaints for that year. The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff divides a Congressional estimate of annual consumer

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credit cards (2.47%). Board of Governors of the Federal Reserve System, *Charge Off and Delinquency Rates on Loans and Leases at Commercial Banks*, available at <https://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (reporting a 2.47% delinquency rate for credit cards for the second quarter of 2018).

<sup>28</sup> 16 CFR 310.3(a)(1)(vi).

<sup>29</sup> 16 CFR 310.4(a)(2).

<sup>30</sup> 16 CFR 310.4(a)(3).

<sup>31</sup> 16 CFR 310.4(a)(4).

injury from telemarketing fraud (\$40 billion)<sup>32</sup> by available data on total consumer and business-to-business telemarketing sales (\$310.0 billion projected for 2016),<sup>33</sup> or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint.

Thus, for the 7,631 Sentinel complaints in 2018 about investment opportunities covered by the TSR,<sup>34</sup> or 0.5% of the 1,427,563 total fraud complaints reported that year,<sup>35</sup> the general sales disclosure burden is 2,800 hours (1.8 billion inbound calls x 0.0007 [0.005 x 0.13] x 8 seconds ÷ 3,600). Likewise, the burden for business opportunity sales (14,225 complaints), including complaints for multi-level marketing/pyramids/chain letters)<sup>36</sup> is 4,000 hours (1.8

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<sup>32</sup> *House Committee on Government Operations, The Scourge of Telemarketing Fraud: What Can Be Done Against It*, H.R. Rep. 421, 102<sup>nd</sup> Cong., 1<sup>st</sup> Sess. at 7 (Dec. 18, 1991). The FBI believes that this estimate overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. *See* FBI, *A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), available at [https://www.fbi.gov/news/stories/2010/december/telemarketing\\_120810/telemarketing\\_120810](https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810). *See also* Internet Crime Complaint Center, 2017 Annual Report on Internet Crime (citing \$1.4 billion of losses claimed in consumer complaints for 2017), available at [https://pdf.ic3.gov/2017\\_IC3Report.pdf](https://pdf.ic3.gov/2017_IC3Report.pdf).

<sup>33</sup> DMA 2013 Statistical Fact Book (January 2013) projection up through 2016, p. 5 (no associated DMA updates made or otherwise found thereafter).

<sup>34</sup> *See* FTC, Consumer Sentinel Network Data Book 2018 (March 2019) (“Sentinel Data”), Appendix B3, p. 86, available at [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer\\_sentinel\\_network\\_data\\_book\\_2018\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf). The figure above tallies the number of complaints under the subcategories “Advice, Seminars” and “Art\Gems\Rare Coins.” The remaining subcategories under the “Investment Related” category are not covered by either the FTC Act or the TSR.

<sup>35</sup> Sentinel Data at 8.

<sup>36</sup> Sentinel Data at 85. While this total excludes “Franchises/Distributorships” covered by the Franchise Rule and thus not subject to the TSR, the data cannot additionally be segregated to omit “Work-At-Home” opportunities now covered by the Business Opportunity Rule and thus

billion x .001 [0.01 x 0.13] x 8 seconds ÷ 3,600); for advance fee loan sales (16,027 complaints)<sup>37</sup> is 4,000 hours (1.8 billion x 0.001 [0.011 x 0.13] x 8 seconds ÷ 3,600); for credit repair sales (2,928 complaints)<sup>38</sup> is 1,200 hours (1.8 billion x 0.0003 [0.002 x 0.13] x 8 seconds ÷ 3,600); 400 hours for loss recovery services (547 complaints)<sup>39</sup> (1.8 billion x 0.0001 [0.0004 x 0.13] x 8 seconds ÷ 3,600); and 40 hours for CCLP sales (73 complaints)<sup>40</sup> (1.8 billion x 0.00001 [0.0001 x 0.13] x 8 seconds ÷ 3,600). The exceptions to the TSR's inbound call exemptions add an additional 12,440 hours to the general sales disclosure burden.

Altogether, the general sales disclosure burden is 366,588 hours (352,513 hours for outbound sales + 1,635 hours for debt relief inbound sales + 12,440 hours for non-exempt inbound sales).

#### *Specific Transaction Disclosures*

Additional specific disclosures are required if the call involves a prize promotion,<sup>41</sup> the sale of credit card loss protection products,<sup>42</sup> an offer with a negative option feature,<sup>43</sup> or the sale

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also not subject to the TSR. Staff therefore believes this total significantly overstates the opportunities subject to the TSR.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> 16 CFR 310.3(a)(1)(iv)-(v).

<sup>42</sup> 16 CFR § 310.3(a)(1)(vi). It is neither staff's understanding nor belief that CCLP sales occur through inbound calls. Staff anticipates, however, the potential for such sales in an upsell following an inbound call.

<sup>43</sup> 16 CFR 310.3(a)(1)(vii).

of a debt relief service.<sup>44</sup> Staff estimates that the specific sales disclosures other than for debt relief services will require 22,363 hours annually [(450 million direct sales transactions from outbound calls x 5% [estimate of percentage of sales transactions involving prize promotions] x 3 seconds ÷ 3,600 x 25% burden = 4,688 hours) + (450 million direct sales transactions from outbound calls x 0.1% [estimate of percentage of sales transactions involving CCLP] x 4 seconds ÷ 3,600 x 25% burden = 125 hours) + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of outbound calls involving CCLP upsells] x 4 seconds x 25% burden ÷ 3,600 = 10 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 0.1% [estimate of percentage of inbound calls involving CCLP upsells] x 4 seconds x 25% burden ÷ 3,600 = 40 hours) + (450 million sales transactions from outbound calls x 10% [estimate of percentage of outbound calls involving negative options] x 4 seconds ÷ 3,600 x 25% burden = 12,500 hours) + (450 million sales transactions from outbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of outbound calls involving negative option upsells] x 4 seconds x 25% burden ÷ 3,600 = 1,000 hours) + (1.8 billion inbound calls x 40% attempted upsell conversions x 20% sales conversions x 10% [estimate of percentage of inbound calls involving negative option upsells] x 4 seconds ÷ 3,600 x 25% burden = 4,000 hours).

Staff estimates that reciting the specific sales disclosures in each debt relief sales call will take ten seconds, and therefore the disclosure burden associated with the debt relief disclosures is

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<sup>44</sup> 16 CFR 310.3(a)(1)(viii).

4,088 hours (2,942,779 outbound debt relief calls x 10 seconds ÷ 3,600 x 25% burden = 2,044 hours) + (2,942,779 inbound debt relief calls x 10 seconds ÷ 3,600 x 25% burden = 2,044 hours).

Thus, the total specific transaction disclosure burden is 26,451 hours annually (22,363 for non-debt-relief calls) + 4,088 (for debt relief calls).

Cumulatively, therefore, the total annual burden for all of the disclosures is 1,219,428 (826,389 hours pre-sales disclosures + 366,588 hours general sales disclosures + 26,451 hours specific sales disclosures).

(c) Reporting Hours

Finally, any entity that accesses the Registry must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information

annually.<sup>45</sup> Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 219 burden hours (6,561 entities x 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 109 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 328 hours per year.

Thus, total recordkeeping, disclosure, and reporting burden is 1,233,817 hours (14,061 hours + 1,219,428 hours + 328 hours).

**Estimated Annual Labor Cost: \$17,181,914**

(a) Recordkeeping Labor Cost

As indicated above, staff estimates that existing telemarketing entities require 14,061 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions.

Applying a clerical wage rate of \$16.92/hour,<sup>46</sup> recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately \$237,912. Assuming

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<sup>45</sup> See 67 FR 37,366 (May 29, 2002). The two-minute estimate likely is conservative. The OMB regulation defining "information" under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.*, the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. See 5 CFR 1320.3(h)(1).

<sup>46</sup> This figure is derived from the mean hourly wage shown for Office Clerks, General. See "Occupational Employment and Wages–May 2018," Bureau of Labor Statistics, U.S. Department of Labor, released March 29, 2019, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2018"), *available at* <https://www.bls.gov/news.release/ocwage.nr0.htm>.



also from the above a cumulative burden of 7,500 hours for 75 new telemarketing entities per year to set up compliant recordkeeping systems (75 new entrants/year x 100 hours each), and applying to that a skilled labor rate of \$27.86/hour,<sup>47</sup> cumulative labor costs for them would approximate \$208,950 yearly. Thus, the estimated labor cost for recordkeeping associated with the TSR for both new and existing telemarketing entities, including prerecorded and debt relief calls, is \$446,862.

(b) Disclosure Labor Cost

The estimated annual labor cost for disclosures for all telemarketing entities is \$16,730,552. This total is the product of applying an assumed hourly wage rate of \$13.72<sup>48</sup> to the earlier stated estimate of 1,219,428 hours pertaining to the pre-sale, general and specific disclosures.

(c) Reporting Labor Cost

Estimated labor cost supplying basic identifying information to the Registry operator is \$4,500 (328 hours x \$13.72 per hour).

Thus, cumulatively for both new and existing telemarketing entities total labor costs are \$17,181,914 [(\$446,862 recordkeeping) + (\$16,730,552 disclosure) + (\$4,500 reporting)].

**Estimated Annual Non-Labor Cost: \$4,717,991**

(a) Recordkeeping

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<sup>47</sup> This figure is derived from the mean hourly wage shown for “Computer Support Specialist.” *See id.*

<sup>48</sup> This figure is derived from the mean hourly wage shown for Telemarketers. *See supra* note 57. It is applied additionally to the ensuing calculation of reporting labor cost regarding the

Staff believes that the capital and start-up costs associated with the TSR's recordkeeping provisions are de minimis. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, consistent with its prior analyses, staff estimates that the estimated 6,561 telemarketing entities subject to the Rule continue to spend an annual amount of \$50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of \$328,050.

(b) Disclosure

Applying the disclosure estimates of 1,219,428 hours to an estimated commercial calling rate of 6 cents per minute (\$3.60 per hour), staff estimates a total of \$4,389,941 in telephone charges.<sup>49</sup>

Thus, total capital and/or other non-labor costs are \$4,717,991 (\$328,050 (office supplies) + \$4,389,941 (telephone charges)).

**Request for Comment:** Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure, recordkeeping, and reporting requirements are necessary, including whether the resulting information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

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Registry operator.

<sup>49</sup> Staff believes that other non-labor costs would be incurred largely by affected entities in the ordinary course of business and, beyond that, would not materially exceed those ordinary costs.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “TSR PRA Comment, FTC File No. P094400” on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the [regulations.gov](https://www.regulations.gov) site.

If you file your comment on paper, write “TSR PRA Comment, FTC File No. P094400” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at [www.regulations.gov](https://www.regulations.gov), you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not

include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at [www.regulations.gov](http://www.regulations.gov), we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will

consider all timely and responsive public comments that it receives on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

**Heather Hipsley,**

*Deputy General Counsel.*

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